Article 21.

Prepaid Entertainment Contracts.

§ 66-118. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Contract cost" means the total consideration paid by a buyer pursuant to a contract including but not limited to:
   a. Any initiation or nonrecurring fee charged;
   b. All periodic fees required by the contract;
   c. All dues or maintenance fees; and
   d. All finance charges, time-price differentials, interest, and other similar fees and charges.

(2) "Contract duration" means the total period of use allowed by a buyer's contract, including months or time periods that are called "free" or "bonus" or that are described in any other terms suggesting that they are provided free of charge.

(3) "Prepaid entertainment contract" means any contract in which:
   a. The buyer of a service pays for or is obligated to pay for service prior to the buyer's receipt of or enjoyment of any or all of the services;
   b. The seller is other than a licensed nonprofit school, college, or university; the State or any subdivision thereof; or a nonprofit religious, ethnic, or community organization; and
   c. The services to be performed are related to any one of the following:
      1. Dance lessons or facilities, or any related services or events;
      2. Matching, dating, or social club services or facilities, including any service represented as providing names of, introduction to, or opportunity to meet members of the opposite sex;
      3. Martial arts training;
      4. Health or athletic club services or facilities. (1979, c. 833, s. 1; 1991 (Reg. Sess., 1992), c. 1009, s. 1.)

§ 66-119. Contract requirements.

Every prepaid entertainment contract shall:

(1) Be in writing, fully completed, dated and signed by all contracting parties. A copy of the contract shall be given to the buyer at the time he signs the contract;

(2) Have a duration of service that is a precisely measured period of years or any definite part of a year;

(3) Contain a full statement of the buyer's rights under G.S. 66-120;

(4) Contain, in immediate proximity to the space reserved for the signature of the buyer, in bold face type of a minimum size of 10 points, a statement of the buyer's rights under G.S. 66-121, in substantially the following form:

"You the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of this contract. To cancel, you must notify the seller in writing not later than midnight of

_____

(Date)."

(1979, c. 833, s. 1.)

§ 66-120. Buyer's rights.

Every seller of a prepaid entertainment contract must:

(1) Deliver to the buyer all information of a personal or private nature, including but not limited to answers to tests or questionnaires, photographs, evaluations, and background information, within 30 days after request therefor;

(2) Refund to the buyer at least ninety percent (90%) of the pro rata cost of any unused services, within 30 days after request therefor, if:

a. The buyer is unable to receive benefits from the seller's services by reason of death or disability; or

b. The buyer relocates more than eight miles from his present location, and more than 30 miles from the seller's facility and any substantially similar facility that will accept the seller's obligation under the contract and this Article; or

c. The seller relocates his facility more than eight miles from its present location, or the services provided by the seller are materially impaired.

(3) Refund to the buyer the pro rata cost of any unused services under all contracts between the parties, within 30 days after request therefor, if the aggregate price of all contracts in force between the parties exceeds one thousand five hundred dollars ($1,500). Provided, if the contract so provides, the seller may retain a cancellation fee of not more than 25 percent (25%) of the pro rata cost of unused services on all contracts, not to exceed five hundred dollars ($500.00). (1979, c. 833, s. 1.)

§ 66-121. Buyer's right to cancel.

(a) In addition to any right otherwise to revoke an offer or cancel a sale or contract, the buyer has the right to cancel a prepaid entertainment contract sale until midnight of the third business day after the buyer signs a contract which complies with G.S. 66-119(4).

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the contract.

(c) Notice of cancellation, if given by mail, is given when it is deposited in the United States mail properly addressed and postage prepaid.

(d) Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the contract.

(e) For purposes of this Article, business days are all days other than Saturdays, Sundays, holidays, and days on which the seller's facility is not open to the buyer. (1979, c. 833, s. 1.)

§ 66-122. Rights and responsibilities after cancellation.

Within 30 days after a prepaid entertainment contract has been cancelled in accordance with G.S. 66-121, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. (1979, c. 833, s. 1.)

§ 66-123. Prohibited practices.

(a) No person shall sell any prepaid entertainment contract or contracts which, when taken together with all other contracts in force between the parties have an aggregate duration of service in excess of three years.

(b) No person shall sell any prepaid entertainment contract unless performance of that contract is to begin within 180 days. (1979, c. 833, s. 1.)

§ 66-124. Bond or escrow account required.

(a) Prior to the sale of any prepaid entertainment contract for services which are available on the day of sale, the seller shall purchase a surety bond issued by a surety company authorized to do business in this State, as follows:

(1) The amount of the surety bond shall be equal to the aggregate value of outstanding liabilities to buyers, or ten thousand dollars ($10,000), whichever is greater. For purposes of this section, "liabilities" means the moneys actually received in advance from the buyer on or after January 1, 1993, for contract costs, less the prorated value of services rendered by the seller. The bond shall be in favor of the State of North Carolina and in a form approved by the Attorney General. The surety company shall have a duty to disclose the amount and status of the bond to the public upon request. Any person who is damaged by reason of the closing of a facility or bankruptcy of the seller, may bring an action against the bond to recover damages suffered; provided, however, that the aggregate liability of the surety shall be only for actual damages and in no event shall exceed the amount of the bond.

(2) The amount of the bond shall be based upon a written sworn statement by the seller under penalty of perjury stating the seller's outstanding liabilities to buyers. A corporate seller's statement shall be signed by the president of the corporation; the statement of a partnership shall be signed by a general partner; and the statement of a sole proprietorship shall be signed by the sole proprietor. The statement and a copy of the bond shall be filed with the Attorney General within 90 days after the first contract is sold and at 180-day intervals thereafter.

(3) The amount of the bond shall be increased or may be decreased, as necessary, to take into account changes in the seller's outstanding liabilities to buyers on a semiannual basis.

(4) The bonding requirement of this section applies to each location of the seller in any case where a seller operates or plans to operate more than one facility in the State. A separate bond for each separately located facility shall be filed with the Attorney General.

(5) Notwithstanding any other provision of this section, no seller is required to purchase a bond in excess of two hundred fifty thousand dollars ($250,000) per facility.

(6) A change in ownership shall not release, cancel, or terminate liability under any bond previously established unless the Attorney General agrees in writing to the release, cancellation, or termination because the new owner has established a new bond for the benefit of the previous owner's members, or because the former owner has paid the required funds to its members.

(7) In lieu of purchasing the bond required by subdivision (1), an irrevocable letter of credit from a bank insured by the Federal Deposit Insurance Corporation, in a form acceptable to the Attorney General, may be filed with the Attorney General.

(8) Claims and actions by a buyer of prepaid entertainment contract services:

a. A buyer of prepaid entertainment contract services who suffers or sustains any loss or damage by reason of the closing of a facility or bankruptcy of the seller shall file a claim with the surety, and, if the claim is not paid, may bring an action based on the bond and recover against the surety. In the case of a letter of credit that has been filed with the Attorney General, the buyer may file a claim with the Attorney General;

b. Any claim under paragraph a. of this subdivision shall be filed no later than one year from the date on which the facility closed or bankruptcy was filed;

c. The Attorney General may file a claim with the surety on behalf of any buyer in paragraph a. of this subdivision. The surety shall pay the amount of the claims to the Attorney General for distribution to claimants entitled to restitution and shall be relieved of liability to that extent;

d. The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed;

e. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Attorney General for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(9) The seller shall be exempt from the bonding requirement if all of its unexpired contracts and present membership plans meet the following criteria: (i) no initiation fee or similar nonrecurring fee is charged, and (ii) at no time is any member charged to pay for the use of facilities or services more than 31 days in advance.

(b) If, for any reason, services under a prepaid entertainment contract are not available to the buyer on the date of sale, then:

(1) The seller shall establish a surety bond issued by a surety company authorized to do business in the State or shall establish an escrow account with a licensed and insured bank or savings institution located in this State. The surety bond or escrow account shall be in the amount of ten thousand dollars ($10,000) per location or in an amount equal to all contract costs received from the buyer, whichever is greater. The bond or escrow account shall be in favor of the State of North Carolina and a copy of the bond or escrow agreement shall be filed with the Attorney General prior to the sale of any prepaid entertainment contracts. The bond or escrow account shall remain in force until 60 days after all services of the seller are available to the buyer, at which time the seller shall comply with the bonding requirement of subsection (a) of this section. The escrow account shall be established and maintained only in a financial institution which agrees in writing with the Attorney General to hold all funds deposited and not to release such funds until receipt of written authorization from the Attorney General. The funds deposited will be eligible for withdrawal by the depositor after the facility has been open and providing services for 60 days and the Attorney General gives written authorization for withdrawal. Any person who is damaged by any violation of this Article, or by the seller's breach

of the contract for sale or any obligation arising therefrom may bring an action against the bond or escrow account to recover damages suffered; provided, however, that the aggregate liability of the surety or escrow agent shall be for actual damages only and in no event shall exceed the amount of the bond or escrow account.

(2) The buyer's right to cancel the contract pursuant to G.S. 66-121 shall be extended until midnight of the third business day after the date upon which the services become available and the buyer is notified that the services are available. (1979, c. 833, s. 1; 1991 (Reg. Sess., 1992), c. 1009, s. 2.)

§ 66-124.1. Record keeping; provision of records to the Attorney General.

(a) Any person or business bonded under this Article shall maintain accurate records of the bond and of premium payments on it. These records shall be open to inspection by the Attorney General at any time during normal business hours.

(b) Any person who sells prepaid entertainment contracts shall maintain accurate records, updated as necessary, of the name, address, contract terms, and payments of each buyer of services. These records shall be open to inspection by the Attorney General, upon reasonable notice not to exceed 72 hours, at any time during normal business hours.

(c) On the permanent closing of a facility, the seller of the services shall provide the following information to the Attorney General within 15 business days:

(1) A list of the names and addresses of all buyers holding unexpired contracts;

(2) The original or a copy of all buyers' contracts; and

(3) A record of all payments received under buyers' agreements. (1991 (Reg. Sess., 1992), c. 1009, s. 3.)

§ 66-125. Remedies.

(a) Any buyer injured by any violation of this Article may bring an action for recovery of damages, including reasonable attorney's fees.

(b) The remedies herein shall be in addition to any other remedies provided for by law or in equity, but the damages assessed shall not exceed the largest amount of damages available by any single remedy.

(c) The violation of any provisions of this Article shall constitute an unfair practice under G.S. 75-1.1. (1979, c. 833, s. 1.)

§§ 66-126 through 66-130. Reserved for future codification purposes.